

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

Phillip Ray Berdeski, in his
individual and representative
capacity as trustee of the Berdeski
Family Trust;
Nael Yousif Zora; and Does 1-10,

Defendants.

Case No. '14CV2485 W WVG

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence**

Plaintiff Chris Langer complains of Defendants Phillip Ray Berdeski, in his individual and representative capacity as trustee of the Berdeski Family Trust; Nael Yousif Zora; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side

1 of his van and he has a Disabled Person Parking Placard issued to him by the
2 State of California.

3 2. Defendants are, or were at the time of the incidents, the real property
4 owners, business operators, lessors and/or lessees for the Bonita Valley
5 Liquor store (“Store”) located at or about 4040 Bonita Road, Bonita,
6 California.

7 3. Plaintiff does not know the true names of Defendants, their business
8 capacities, their ownership connection to the property and business, or their
9 relative responsibilities in causing the access violations herein complained
10 of, and alleges a joint venture and common enterprise by all such
11 Defendants. Plaintiff is informed and believes that each of the Defendants
12 herein, including Does 1 through 10, inclusive, is responsible in some
13 capacity for the events herein alleged, or is a necessary party for obtaining
14 appropriate relief. Plaintiff will seek leave to amend when the true names,
15 capacities, connections, and responsibilities of the Defendants and Does 1
16 through 10, inclusive, are ascertained.

17
18 **JURISDICTION & VENUE:**

19 4. This Court has subject matter jurisdiction over this action pursuant to
20 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
21 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22 5. Pursuant to pendant jurisdiction, an attendant and related cause of
23 action, arising from the same nucleus of operative facts and arising out of
24 the same transactions, is also brought under California’s Unruh Civil Rights
25 Act, and the California Disabled Persons Act, which acts expressly
26 incorporate the Americans with Disabilities Act.

27 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
28 founded on the fact that the real property which is the subject of this action

1 is located in this district and that Plaintiff's cause of action arose in this
2 district.

3
4 **FACTUAL ALLEGATIONS:**

5 7. The Plaintiff went to the Store in January of 2014 to shop.

6 8. The Store is a facility open to the public, a place of public
7 accommodation, and a business establishment.

8 9. Parking spaces are one of the facilities, privileges and advantages
9 offered by defendants to their customers at the Store.

10 10. Although parking is one of the facilities available to patrons of the
11 Store, there is not a compliant handicap-accessible parking space. Instead,
12 there is a parking space reserved for disabled persons that has a
13 noncompliant design. The access aisle, for example, looks like a polygon
14 with varying sizes and lengths.

15 11. There are other parking spaces on the property, but many of them are
16 not compliant either. Two of them have a parallel design with no access aisle
17 at all. Another parking space has a handicap sign in front of it but there is
18 no blue striping or access aisle. Yet another parking space, in front of
19 Colima's, has a built-up curb ramp that extends into the access aisle. The
20 ramp, meanwhile, has no edge protection. There are two handicap-accessible
21 parking spaces in front of Wells Fargo bank but those spaces are only
22 reserved for banking customers. Plaintiff is not a banking customer.

23 12. Plaintiff alleges that fully compliant handicap-accessible parking
24 spaces once existed at this shopping center but they have been allowed to
25 fade away to the point that some of them are no longer available for use by
26 disabled persons.

27 13. Defendants have no policy or procedure in place to make sure that the
28 accessible parking space remains useable in the parking lot. As such, the

1 parking space reserved for disabled persons is no longer available for
2 disabled customers.

3 14. The plaintiff personally encountered this problem. This inaccessible
4 condition denied the plaintiff full and equal access and caused him difficulty
5 and frustration.

6 15. Plaintiff would like to return and patronize the Store but will be
7 deterred from visiting until the defendants cure the violation. Plaintiff lives
8 in San Diego County and visits this area of South Bay often. The Store is
9 conveniently located.

10 16. The defendants have failed to maintain in working and useable
11 condition those features required to provide ready access to persons with
12 disabilities.

13 17. Given the obvious and blatant violations, the plaintiff alleges, on
14 information and belief, that there are other violations and barriers on the site
15 that relate to his disability. Plaintiff will amend the complaint, to provide
16 proper notice regarding the scope of this lawsuit, once he conducts a site
17 inspection. However, please be on notice that the plaintiff seeks to have all
18 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
19 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
20 he can sue to have all barriers that relate to his disability removed regardless
21 of whether he personally encountered them).

22 18. Additionally, on information and belief, the plaintiff alleges that the
23 failure to remove these barriers was intentional because: (1) these particular
24 barriers are intuitive and obvious; (2) the defendants exercised control and
25 dominion over the conditions at this location and, therefore, the lack of
26 accessible facilities was not an “accident” because had the defendants
27 intended any other configuration, they had the means and ability to make the
28 change.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of plaintiffs and against all defendants (42 U.S.C. section 12101, et seq.)

19. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

20. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by

1 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

2 21. Any business that provides parking spaces must provide handicap
3 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
4 every eight of those handicap parking spaces but not less than one must be a
5 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
6 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
7 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

8 22. Here, the lack of a compliant handicap-accessible parking space in
9 front of the Store is a violation of the law.

10 23. Under the 1991 Standards, parking spaces and access aisles must be
11 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
12 Standards § 4.6.2.

13 24. Here, the access aisle is not level and has a ramp taking up part of the
14 access aisle. It exceeds 2.2%. Under the 2010 Standards, access aisles shall
15 be at the same level as the parking spaces they serve. Changes in level are
16 not permitted. 2010 Standards § 502.4. “Access aisle are required to be
17 nearly level in all directions to provide a surface for wheelchair transfer to
18 and from vehicles.” 2010 Standards § 502.4.

19 25. To qualify as a reserved handicap parking space, the space must be
20 properly marked and designated. Under the ADA, the method and color of
21 marking are to be addressed by State or local laws or regulations. See 36
22 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to
23 properly and effectively reserve a parking space for persons with disabilities,
24 each such space must be identified with a reflectorized sign permanently
25 posted adjacent to and visible from each stall or space. CBC § 1129B.4. The
26 sign must consist of the International Symbol of Accessibility in white on a
27 blue background. *Id.* It cannot be smaller than 70 square inches and must be
28 mounted so that there is a minimum of 80 inches from the bottom of the sign

1 to the parking space. Id. Signs must be posted so that they cannot be
2 obscured by a vehicle parking in the space. Id. An additional sign or
3 additional language below the symbol of accessibility must state, “Minimum
4 Fine \$250” to ensure that the space remains available for persons with
5 disabilities. Id. Another sign must be posted in a conspicuous place at the
6 entrance to the parking lot or immediately adjacent to each handicap parking
7 space, with lettering 1 inch in height, that clearly and conspicuously warn
8 that unauthorized vehicles parking in the handicap parking spaces can be
9 towed at the owner’s expense. Id. Additionally, the surface of the handicap
10 parking stall must have a profile view of a wheelchair occupant that is 36
11 inches by 36 inches. Id. And the surface of the access aisle must have a blue
12 border. CBC § 1129B.3. The words “NO PARKING” in letters at least a foot
13 high must be painted on the access aisle. Id.

14 26. In our case, some of the parking spaces do not have access aisles
15 whatsoever. Others have signage but do not have any blue striping.

16 27. Additionally, if a curb ramp is not protected by handrails or
17 guardrails, it shall have flared sides. 1991 Standards § 4.7.5. Ramps with
18 drop-offs must have curbs, walls, railings, or projecting surfaces that prevent
19 people from slipping off the ramp. 1991 Standards § 4.8.7.

20 28. Here, the failure to provide edge protection for ramp that comes into
21 the access aisle in front of Colima’s is a violation of the ADA.

22 29. The defendants have no policy or procedure to make sure that its
23 handicap-accessible parking spaces remain useable by disabled persons.

24 30. A public accommodation must maintain in operable working
25 condition those features of its facilities and equipment that are required to be
26 readily accessible to and usable by persons with disabilities. 28 C.F.R. §
27 36.211(a).

28 31. Here, the failure to ensure that the accessible parking was available

1 and ready to be used by the plaintiff is a violation of the law.

2
3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**
4 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)
5 (Cal Civ § 51-53)

6 32. Plaintiff repleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint.

9 33. Because the defendants violated the plaintiffs' rights under the ADA,
10 they also violated the Unruh Civil Rights Act and are liable for damages.
11 (Civ. Code § 51(f), 52(a).)

12 34. Because the violation of the Unruh Civil Rights Act resulted in
13 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
14 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
15 55.56(a)-(c).)

16
17 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**
18 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and
19 against all defendants) (Cal Civ. § 54-54.8)

20 35. Plaintiff repleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint.

23 36. Because the defendants violated the plaintiff's rights under the ADA,
24 they also violated the Disabled Persons Act and are liable for damages. (Civ.
25 Code § 54.1(d), 54.3(a).)

26 37. Because the violation of the Disabled Persons Act resulted in
27 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
28 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §

1 55.56(a)-(c).)

2
3 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of
4 plaintiff and against all defendants)

5 38. Plaintiff repleads and incorporates by reference, as if fully set forth
6 again herein, the allegations contained in all prior paragraphs of this
7 complaint.

8 39. The Defendants had a general duty and a duty arising under the
9 Americans with Disabilities Act and the Unruh Civil Rights Act and
10 California Disabled Persons Act to provide safe, convenient, and accessible
11 facilities to the plaintiffs. Their breach of this duty, as alleged in the
12 preceding paragraphs, has caused injury and damage as alleged above.

13
14 **PRAYER:**

15 Wherefore, Plaintiff prays that this court award damages and provide
16 relief as follows:

17 1. For injunctive relief, compelling defendants to comply with the
18 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
19 Plaintiffs are not invoking section 55 of the California Civil Code and is not
20 seeking injunctive relief under the Disabled Persons Act at all.

21 2. Damages under the Unruh Civil Rights Act and/or the California
22 Disabled Persons Act which damages provide for actual damages and a
23 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
24 acts, simultaneously, and an election will be made prior to or at trial.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

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4 Dated: August 31, 2014

CENTER FOR DISABILITY ACCESS

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6 By: 

7 _____
8 Mark Potter, Esq.
9 Attorneys for Plaintiff
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